IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Crl.Rev.Pet.No. 2470 of 2007()

CRA.662/2006 of VI ADDL.SESSIONS COURT, ERNAKULAM
CC.151/2003 of J.F.C.M., KOTHAMANGALAM

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REVN. PETITIONER: APPELLANT/ACCUSED

MARY VARGHESE, AGED 58 YEARS,
AMALA BHAVAN, SHELTER OF OLD AGED PEOPLE,
PEECHINGAPARAMBU ROAD, EDAPPALLY NORTH P.O.

BY ADV. SMT.S.A.SHERLY

RESPONDENTS: RESPONDENTS/COMPLAINANT

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1. E.V.SCARIA, AGED 84 YEARS,
S/O.VARKEY, ERAKKATTIL HOUSE, PALAKUZHA,
MOOVATTUPUZHA, POWER HOLDER OF IBY SCARIA.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PP K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl. R. P. No.2470/2007

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Dated: 25.6.2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.151/2003 on the file of the J.F.C.M, Kothamangalam, challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellant in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. Having regard to the facts and circumstances of the case, I am inclined to modify the sentence imposed on the revision petitioner. Accordingly, if the revision petitioner pays to the first respondent, complainant, a sum of **Rupees Sixty Thousand** by way of compensation under Section 357(3) Cr.P.C within **three months** from today, she need undergo only imprisonment till the rising of the Court. If the revision petitioner commits default in making the payment as aforesaid, the sentence imposed on her by the Courts below shall be revived.

5. The amounts if any, deposited by the revision petitioner during the pendecy of the appeal before the Lower Appellate court shall be re-funded to her.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V.RAMKUMAR,
JUDGE

mrcs